

Senate Bill No. 558

Passed the Senate September 4, 2013

Secretary of the Senate

Passed the Assembly August 26, 2013

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2013, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 1986.1 of the Code of Civil Procedure, relating to reporters.

LEGISLATIVE COUNSEL'S DIGEST

SB 558, Lieu. Reporters' shield law.

The reporter's shield law contained in the California Constitution prohibits a publisher, editor, reporter, or other person connected with or employed by a newspaper, magazine, or other periodical publication, or by a press association or wire service, from being held in contempt for refusing to disclose the source of any information procured for publication while so connected or employed. The law also prohibits any of those persons from being held in contempt for refusing to disclose any unpublished information obtained or prepared in gathering, receiving, or processing information for communication to the public.

Existing statutory law prohibits any testimony or other evidence given by a journalist under subpoena in a civil or criminal proceeding from being construed as a waiver of the immunity rights provided by the reporter's shield law. Existing law requires that, except in exigent circumstances, a journalist who is subpoenaed in any civil or criminal proceeding be given at least 5 days' notice by the party issuing the subpoena that his or her appearance will be required, and requires a court that holds a journalist in contempt in a criminal proceeding to set forth specified findings regarding the information sought.

This bill, in addition, would require that, except in circumstances that pose a clear and substantial threat to the integrity of the criminal investigation or present an imminent risk of death or serious bodily harm, a party issuing a subpoena in any civil or criminal proceeding to a third party that seeks the records of a journalist to provide notice of the subpoena to the journalist and the publisher of the newspaper, magazine, or other publication or station operations manager of the broadcast station that employs or contracts with the journalist, as applicable, at least 5 days prior to issuing the subpoena. The bill would require the party issuing the subpoena to include in the notice, at a minimum, an explanation

of why the requested records will be of material assistance to the party seeking them and why alternate sources of information are not sufficient to avoid the need for the subpoena. The bill also would revise the exception for the existing 5 days' notice requirement for a subpoena requiring a journalist to appear, providing that the requirement applies except in circumstances that pose a clear and substantial threat to the integrity of the criminal investigation or present an imminent risk of death or serious bodily harm.

The people of the State of California do enact as follows:

SECTION 1. Section 1986.1 of the Code of Civil Procedure is amended to read:

1986.1. (a) No testimony or other evidence given by a journalist under subpoena in a civil or criminal proceeding may be construed as a waiver of the immunity rights provided by subdivision (b) of Section 2 of Article I of the California Constitution.

(b) (1) Because important constitutional rights of a third-party witness are adjudicated when rights under subdivision (b) of Section 2 of Article I of the California Constitution are asserted, except in circumstances that pose a clear and substantial threat to the integrity of the criminal investigation or present an imminent risk of death or serious bodily harm, a journalist who is subpoenaed in any civil or criminal proceeding shall be given at least five days' notice by the party issuing the subpoena that his or her appearance will be required.

(2) To protect against the inadvertent disclosure by a third party of information protected by Section 2 of Article I of the California Constitution, a party issuing a subpoena in any civil or criminal proceeding to a third party that seeks the records of a journalist shall, except in circumstances that pose a clear and substantial threat to the integrity of the criminal investigation or present an imminent risk of death or serious bodily harm, provide notice of the subpoena to the journalist and the publisher of the newspaper, magazine, or other publication or station operations manager of the broadcast station that employs or contracts with the journalist, as applicable, at least five days prior to issuing the subpoena. The party issuing the subpoena shall include in the notice, at a

minimum, an explanation of why the requested records will be of material assistance to the party seeking them and why alternate sources of information are not sufficient to avoid the need for the subpoena.

(c) If a trial court holds a journalist in contempt of court in a criminal proceeding notwithstanding subdivision (b) of Section 2 of Article I of the California Constitution, the court shall set forth findings, either in writing or on the record, stating at a minimum, why the information will be of material assistance to the party seeking the evidence, and why alternate sources of the information are not sufficient to satisfy the defendant's right to a fair trial under the Sixth Amendment to the United States Constitution and Section 15 of Article I of the California Constitution.

(d) As used in this section, "journalist" means the persons specified in subdivision (b) of Section 2 of Article I of the California Constitution.

Approved _____, 2013

Governor